



**U.S. Citizenship
and Immigration
Services**

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 8818984

Date: AUG. 26, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a financial manager, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that she had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits a brief asserting that she is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).¹ Dhanasar states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national’s contributions; and whether the national interest in the foreign national’s contributions is

¹ In announcing this new framework, we vacated our prior precedent decision, Matter of New York State Department of Transportation, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (NYSDOT).

² See also Poursina v. USCIS, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated the national importance of her proposed endeavor under the first prong of the Dhanasar analytical framework.

Regarding her claim of eligibility under Dhanasar's first prong, the Petitioner indicated that she intends to "work as a financial manager for U.S. companies in need of financial restructuring. I will also serve foreign companies and individual investors – stemming from Brazil and Latin America – who seek to expand their real estate investment portfolio in the U.S." She further stated that her proposed endeavor involves consulting foreign clients "on how to best invest and transfer their wealth into the U.S. market." The Petitioner also asserted that her undertaking involves running "my own property management company, in which capacity I will buy, sell, and rent commercial and residential units in the U.S. My project would first assist clients with property purchases and rentals, including all mortgage-related activities, and I will then offer contracting services, including property administration and management." Additionally, the Petitioner explained that she plans "to prospect investment opportunities, establish multinational partnerships, and work with companies, clients, and investors by offering such entities different financial platforms – explicitly serving the U.S. real estate market."

The Petitioner presented a May 2019 letter from [REDACTED] a vacation rental property management company in [REDACTED] Florida, stating that she has been "working with the company since January 2019."⁴ This letter indicated that the Petitioner's duties include maintaining accounting records, providing financial analysis, reviewing payment reservations, supervising current accounts, organizing company payments, posting all payments and receipts on QuickBooks, drafting monthly financial reports to company clients, making payments to clients, paying state and local taxes, renewing vacation licenses, and verifying utility payments.

In her appeal brief, the Petitioner maintains that as a financial manager, her proposed work involves "serving U.S. businesses and their respective clients alike on their financial activities." She further contends that "[b]esides restructuring the financial processes and profitability levels of varied wealth management organizations, she will also rightly serve both Brazilian and American investors looking to expand their businesses and investment portfolios to abroad markets, such as the U.S. and Latin America, respectively." Furthermore, the Petitioner states that "[i]n both circumstances, she will serve as a financial

³ See Dhanasar, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for her to have a job offer from a specific employer. However, we will consider information about her position to illustrate the capacity in which she intends to work in order to determine whether her proposed endeavor meets the requirements of the Dhanasar analytical framework.

entity regarding foreign investment opportunities, particularly enhancing the United States' economic landscape.”

The record includes reports relating to “Commercial Banking in the U.S.,” the value of our country’s financial services industry (\$1.45 trillion), the ways in which the stock market effects the U.S. economy, changes facing the real estate investment industry, and a projected skilled labor shortage affecting both developed and developing economies. In addition, the Petitioner provided articles discussing financial inclusion as a way to foster economic development, the lack of consumer trust in the financial services industry, challenges facing retail banks, and real estate’s impact on the U.S. economy. She also offered information about capital, savings, and investment as part of the U.S. economy; foreign investors’ attraction to the U.S. commercial real estate market; the occupational outlook for financial managers; and international investment’s effect on the global economy. The record therefore supports the Director’s determination that the Petitioner’s proposed work as a financial manager has substantial merit.

In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the “the specific endeavor that the foreign national proposes to undertake.” See Dhanasar, 26 I&N Dec. at 889. In Dhanasar, we further noted that “we look for broader implications” of the proposed endeavor and that “[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field.” Id. We also stated that “[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance.” Id. at 890.

The Petitioner maintains on appeal that her proposed work “offers significant contributions to the field more broadly.” She asserts that “a great number of investors from Brazil and other countries in Latin America are currently looking for safe haven countries to invest their money The Petitioner’s mission is to attract those foreign investors and convince them that the United States are their best option.” The Petitioner further argues that “with more investments she helps bring into the country, the economy gets stronger and more jobs are created.” In addition, she contends that “[t]he benefits that she can generate advancing her proposed endeavor will positively impact, not only employers or potential clients, but also a significant amount of people and companies affected by the services provided in the financial industry, as well as in the real estate industry.” The Petitioner also claims that her proposed endeavor stands to affect the national economy by “[o]ffering economic convenience and agility”; “[d]riving financial productivity for U.S. companies, investors, and clients that wish to expand their investment portfolio to abroad markets”; and “[p]rioritizing the domestic job market.”

To evaluate whether the Petitioner’s proposed endeavor satisfies the national importance requirement we look to evidence documenting the “potential prospective impact” of her work. Although the Petitioner’s statements reflect her intention to provide valuable financial management services for her U.S. employer and future clients, she has not offered sufficient information and evidence to demonstrate that the prospective impact of her proposed endeavor rises to the level of national importance. In Dhanasar we determined that the petitioner’s teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. Id. at 893. Here, we find the record does not show that the Petitioner’s proposed endeavor stands to sufficiently

extend beyond her employer and clientele to impact the financial services industry, real estate market, or U.S. economy more broadly at a level commensurate with national importance.

Furthermore, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact or job creation attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's financial projects would reach the level of "substantial positive economic effects" contemplated by Dhanasar. Id. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the Dhanasar framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the Dhanasar precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in Dhanasar, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite first prong of the Dhanasar analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.